IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 11TH JANUARY 2007 / 21ST PAUSHA 1928

Crl.MC.No. 18 of 2007()

CC.203/2005 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, THRISSUR

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PETITIONER:

SATISH CHANDRA M. AGARWAL,
PARTNER, M/S. MATHRALAL MUNGALAL AGARWAL,
SHRIKUNJ, PATRAKAR COLONY, NEAR CHOUDHARY
HOSPITAL, AKOLA, 444 001.

BY ADV. SRI.C.A.MAJEED

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
THE FOOD INSPECTOR, ARIMBUR PANCHAYATH,
THRISSUR CIRCLE, BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 11/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 18 of 2007

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Dated this the 11th day of January, 2007

O R D E R

The petitioner claims to be the third accused in a prosecution under the provisions of the Prevention of Food Adulteration Act. Accused 1 and 2 have already been found not guilty and acquitted by the learned Magistrate as per judgment dt.29.3.2005, a copy of which is produced as Annex.B. Their plea of warranty was accepted and they were found not guilty and acquitted. The petitioner, who claims to be the third accused, is the alleged warrantor. The alleged warranter has been impleaded as per a communication received from the Municipal Corporation office, Khandwa, which is produced as Ext.P27 in the trial before the learned Magistrate. Based on the warrantee and the letter of the Municipal Corporation, the third accused was arrayed as the accused in the prosecution.

2. The petitioner has now come to this Court in 2007 with the prayer that the proceedings against him may be quashed invoking the powers under Section 482 Cr.P.C.

3. What is the reason? The learned counsel for the petitioner submits that Annex.E i.e., Ext.P27 does not convey the correct information. According to him, the information furnished in Annex.E is incorrect. He wants to rely on Annex.C document, copy of a certificate issued by the Health Officer of Municipal Corporation, which contains information contrary to Ext.P27.

4. Whether Ext.P27 is to be accepted or whether the original of Annex.C which has not been produced before Court, has to be accepted cannot obviously be decided in this proceedings under Section 482 Cr.P.C. It is for the petitioner to appear before the learned Magistrate and raise the contention that Ext.P27 does not contain correct and relevant information. I am not persuaded to agree that the powers under Section 482 Cr.P.C. can or ought to be invoked in the facts and circumstances of this case.

5. The learned counsel for the petitioner submits that the third accused is at Khandwa, which is said to be in Madhya Pradesh. The personal appearance of the petitioner may not be insisted by the learned Magistrate on all dates of posting, it is urged. It is certainly for the petitioner to apply before the learned Magistrate for exemption and I have

no reason to assume that the learned Magistrate would not consider such application for exemption on merits and in accordance with law.

6. This Crl.M.C. is accordingly dismissed. I may hasten to observe that the dismissal of this Crl.M.C. will not in any way fetter the rights of the petitioner to raise all relevant and appropriate contentions before the learned Magistrate. I have only chosen to observe that powers under Section 482 Cr.P.C. do not deserve to be invoked in favour of the petitioner at this stage.

(R. BASANT)
Judge

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